

TEXAS DOG BITE CLAIMS



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Texas Dog Bite Problems

Dog attacks are a big problem in the United States and Texas. The Centers for Disease Control has found that the U.S. has roughly 4.5 million dog bite victims every year. Other governmental studies found that 750,000 of these attacks result in the victim needing medical care, and over 300,000 people per year require visits to the emergency room as a result of dog attacks.

Unfortunately, Texas seems to bear the brunt of this problem. From 2005 to 2013, Texas had 34 fatalities from dog bites, more than any other state. In Texas, children are the biggest targets for dogs. Sixty-eight percent of Texas dog bite victims are under the age of 12, and fifty-two percent were under the age of 3.

While all types of dogs can cause attacks, many of the most serious attacks come from a few types of breeds. The website Animals 24-7 collected data from reported attacks in the United States between 1982 and 2016 and found that the following breeds were responsible for a large portion of serious attacks:

Pit Bull (4,693)

Rottweiler (612)

German Shepherd (220)

Bull Mastiff (124)

Husky (95)



What Are Your Claims?

In Texas, victims of dog bites generally pursue two types of claims. For a negligence claim, the victim must prove: (1) that the dog owner was negligent; and (2) that the dog owner's negligence was a cause of the victim's injuries. There are a number of ways that a dog owner can be negligent. The most common claims are that the dog owner didn't properly restrain the dog (this claim is especially effective in those towns or counties that have laws requiring dogs to be restrained at all times), that the dog owner didn't properly train the dog, or that the dog owner didn't properly intervene once the dog started attacking the victim.



The other common claim is called a strict liability claim. Under a strict liability claim, the defendant (the person being sued) is responsible for injuries caused by the dog if the victim proves: (1) the defendant was the owner or possessor of the animal; (2) the dog had dangerous propensities when compared to other dogs; (3) the defendant knew or had reason to know that the dog had dangerous propensities; and (4) the dog's dangerous propensities were a producing cause of the victim's injuries. At least one Texas case has held that a dog that has a history of attacks automatically has "dangerous propensities" because most dogs don't attack people.

Does Texas Have A "One Bite" Rule?

Many states have a "one bite rule," which means that an owner cannot be held liable for a dog's attack unless the dog has a history of a prior attack. Texas does not follow this rule. In a strict liability claim, the victim must prove that the dog was dangerous. The primary way to prove this is through evidence of a prior bite. But that's not the only way. A victim can prove this by showing the dog was aggressive towards strangers, like pulling on a leash or growling at people. The ways to prove a dog was dangerous are almost limitless. Additionally, for a negligence claim, there is no requirement to prove that the dog was even dangerous. If a person doesn't properly restrain their dog or doesn't train their dog, the dog owner can be liable for injuries even if the dog doesn't have a history of being dangerous.

Having said that, the dog's history is important to the value of the your claim. For similar injuries, the claim against the owner whose dog has a long history of attacks is worth more than the claim against the owner whose dog has never attacked someone. But you can make a claim even when the dog has never had a prior attack.

Make Your Claim As Soon As Possible

Don't wait to make your claim.

In Texas, claims based on animal attacks must be filed within two years of the attack. However, don't wait that long to initiate a claim. You need to contact a lawyer right away to make sure that all investigations necessary can be done. That may mean tracking down the dog's history, talking to neighbors, or conducting other investigation. Waiting too long to hire a lawyer and make your claim may make it much harder or even impossible to do this work.



Who Can You Make A Claim Against ?

There are multiple people who might be sued in a dog attack case. The obvious answer is the dog owner. In almost all cases, we will make a claim against the owner of the dog.

But there are other situations where we may make claims against other parties as well. If the dog is left in the care of someone else other than the owner, that person might be liable as well. Like the owner, a person caring for a dog must responsibly handle the dog and intervene should an attack occur.

The other common person to consider is a landlord. Under Texas law, if a landlord knows a dangerous animal is on the premises and the landlord has the ability to control the premises, then the landlord owes a duty of ordinary care to victims injured by the animal. In other cases involving rental properties, claims should also be considered against any property management companies for violating their duties.

Types Of Things You Can Recover In A Claim

- 1) **Cost of medical care.** This would include all care, including care for wounds, care for psychological counseling, and care related to any scarring.
- 2) **Loss of earning capacity.** If the attack affects your ability to work, then you're entitled to ask for damages relating to loss of earning capacity.
- 3) **Pain.** The law allows recovery for an amount to compensate you for the pain you endured as a result of the attack.
- 4) **Mental anguish.** The law allows recovery for an amount to compensate you for the mental anguish you endured as a result of the attack. This can take many forms, including nightmares, reliving the attack, depression, disruption of sleep, disruption in eating, inability to concentrate, and physical symptoms such as headaches or nausea, anxiety and changes in mood.
- 5) **Physical impairment.** Many attacks affect a person's ability to participate in or do various activities. This may include affecting your ability to do household chores, take care of yourself, take care of your children or participate in hobbies. The law allows you to recover an amount to compensate you for these losses.
- 6) **Disfigurement.** Many persons sustain scars or visible injuries after dog attacks. The law allows you to recover an amount to compensate you for this disfigurement.

What Do You Do If You're Attacked By A Dog?

1) If it's serious, call 911. Get emergency help and care out there as soon as possible.

2) Get as much information about the dog and the dog's owner as you can. This is critical. We have had cases where the attacking dog was just visiting someone's home. If our client didn't get the dog owner's name and other information at that time, it would have been difficult or impossible to track the dog down later. Also, take photos of the dog if you can. Oftentimes, the dog will be put down after an attack, and it can be difficult to get photos of the dog if you didn't get them the day of the attack.

3) Get the medical care that you need.

4) Take photos of your injuries. There is a saying that a picture is worth a thousand words. In lawsuits, pictures can be worth thousands of dollars. Document your injuries and how they change or heal with photos.



5) Make a report with local animal control offices. Most cities have animal control laws that allow you to make a complaint and have an attacking dog classified as a dangerous dog. This process might help protect others in the future.

6) Keep all documents you receive from doctors, the police, animal control or others. After the attack, you might be contacted by a number of different people. It can be difficult to remember all of them. Keeping all paperwork can be the key to knowing who you talked to.

7) Don't talk to the insurance company. The insurance company is not your friend. They are trying to minimize what they have to pay out to you. Don't talk to them without a lawyer present.

What Happens If My Dog Is Attacked?

Many dog attacks result in injuries to your dog. As a dog owner and lover, I know these can be traumatic. Unfortunately, the law doesn't see it that way. The Texas Supreme Court has ruled that animal owners can only recover economic losses relating to injuries to an animal. For example, if your dog incurs medical expenses as a result of an attack, then you can ask for that. If your dog is killed, then you can seek the recovery of the cost of a new dog. If your dog is an actor or otherwise a source of income, then you can recover the loss of income that you lost because the dog was hurt. But other than these areas, you are largely out of luck.

Who Might Pay For A Dog Attack Claim?

Typically, dog bite claims are paid for by the dog owner's homeowner's insurance. Most homeowner's insurance policies will cover claims that result from dog attacks.



Unfortunately, all policies are different. Some policies are written so that they exclude all claims arising from dog attacks, and some policies exclude attacks by certain breeds of dogs. We won't know whether your claim is covered until we start investigating your case. In some cases, when the dog owner doesn't have insurance, we can sue the dog owner directly to go after the dog owner's assets. But these cases have to be special cases where the dog owner has enough money to satisfy the claim.

Of course, if you are suing someone other than a dog owner (such as a landlord or property management company), then those entities and their insurance companies can also help pay for a dog attack claim.

Mistakes That Can Ruin Your Dog Bite Claim

1. Settling the case too early. Many insurance companies want to take advantage of you by settling the case right away. Unfortunately, that is often before you have had time to know the full extent of your injuries or if/how you will heal. Many times, your medical recovery doesn't go the way we expect. There may be unexpected infections or unexpected psychological responses to a dog attack. If you settle the claim early, thinking the attack is minor, you've given up your rights, and you can't make a full recovery if your injuries are more serious than you think.



2. Failing to contact the police or getting information at the scene. I know you're hurt. But you may only have one opportunity to get the dog owner's name and information. If you don't get that at the scene, it may be impossible to make a claim later.

3. Talking to the insurance company. The insurance company isn't your friend, and their job isn't to try and compensate you fairly. The insurance adjuster's job is to pay you as little as possible. Don't help them by talking to them and providing information that they may use against you.

4. Not being honest with your attorney. Keeping secrets from your lawyer is dangerous. You may think you can hide things from the insurance company, but insurance companies go to great lengths to investigate you. Be honest with your attorney and tell your attorney anything that is bad. If we learn about something from you, we can deal with it. But if we learn about it from the insurance company, the damage is already done.

Mistakes, continued



5. Not documenting your injuries and losses. Insurance companies don't just take your word about how bad you're hurt. They want evidence. Go to the doctor and get the care you need, and tell your doctors about all your injuries so the records tell your story. And document your injuries with photos or videos that help show the full story.

6. Not being honest with your doctor. We need your doctors to testify about your injuries. If your doctors learn that you're not being completely honest, they'll be less likely to cooperate with you.

7. Not following your doctor's advice. If your doctor makes a recommendation, follow it. Insurance companies love claimants who don't follow medical advice because it's easy to use that information against you. Do what your doctor says.

8. Judging your case by a friend's case. Clients often come and tell us a friend or neighbor had a similar incident, and the clients then tell us what recovery that friend or neighbor received. Every case is different. There are undoubtedly things we don't know about the friend's case, and we can't judge cases against one another without knowing all the facts.

9. Posting about your injury on social media. THIS MIGHT BE THE MOST IMPORTANT DANGER. Assume that the insurance company is making copies of every social media post you make and will then twist those posts to use against you. It's best if you refrain from social media totally while your case is going on, but if you can't do that, certainly don't post about the attack, your injuries or the case.

Written Discovery We Send In Claims

The rest of this ebook will give you an idea about some of the more technical parts of a dog bite claim. Many cases settle without a lawsuit. But the rest of the book will talk about the lawsuit process. When we have to file a lawsuit over a dog bite claim, the first major stage of the case is the parties exchanging written discovery --- asking the other side to provide written answers to questions and asking them to provide basic documents relating to the claim (they do the same to us).

Sample Interrogatories (Written Questions)

You can tell by the numbering of the questions that these are not all the questions we might ask, but the samples give you an idea of the type of information that might be covered by interrogatories.

6. Describe in detail the dogs you owned and kept on your property at the time of the occurrence made the basis of this suit, including the following: Breed; Weight (on the date of incident); Height (on the date of incident); Sex; Color and Markings; Other distinguishing characteristics; Age; The name and address of the owner of the dog; and The name of the dog.
9. Do you know of any other person(s) that have been injured or who have felt threatened or intimidated by any of your dogs? If yes, please list (a) the name(s), address(es) and telephone numbers of said persons; (b) the date(s) of the injury, threat or intimidation and (c) the nature and extent of the injury, threat or intimidation.
13. State the month and year that you became the owner, or one of the owners, of the dogs the subject of this suit.
14. Basing your answer on what you have seen or heard from others, did any of the dogs the subject of this suit ever growl at, snarl at, snap its teeth at, or lunge at any person prior to the date of the incidents the subject of this suit?
15. If your answer to interrogatory 14 was anything other than a "no," state in detail the facts and circumstances of each such incident, including, but not limited to, the name and last known address and telephone number of each person involved in such incident.
16. If any of the dogs described in the pleadings was normally kept separated from guests in your home prior to the date of the incident sued upon herein, state the reasons why. If such was not the case, state that it was not the case (do not state that the question is "inapplicable").
17. If any of the dogs described in the pleadings was ever kept muzzled, chained or tied up prior to the date of the incident sued upon herein, state the reasons why. If such was not the case, state that it was not the case (do not state that the question is "inapplicable").
19. State the text of any signs on your premises that warned people about either of the dogs described in the pleadings and dates that the signs were displayed. If no signs were displayed, state that none were displayed .

Written Discovery, continued

Requests For Production (document requests)

Here are some examples of the types of documents that we would request from a dog owner.

5. Any and all documents provided to you at any time by Plaintiff.

6. Any and all warnings provided by you to Plaintiff.

22. Any and all diaries, notes, correspondence, calendars and/or narratives, no matter how recorded or memorialized, kept by you and/or others in the home where the incident occurred, pertaining to the incident, the dogs, treatment and/or condition of Plaintiff.

24. Copies of any materials regarding any incarceration, impounding, or quarantine of the dogs in question.

25. Copies of any materials regarding the dogs in question in which local law enforcement, fire and emergency management personnel, or animal control authorities were contacted.

26. All photographs taken of the scene of the accident or the surrounding area of the scene of the accident in the possession, constructive possession, custody or control of Defendant, Defendant's attorney or anyone acting on Defendant's behalf.

27. All photographs taken of any plaintiff which may be in the possession, constructive possession, custody or control of Defendant, Defendant's attorney or anyone acting on Defendant's behalf.

31. All documents from any and all veterinarians who have ever provided veterinarian services to the dogs which are the subject of this litigation.

32. All documents related to any citation(s) received as a result of any action or inaction related to the dogs which are the subject of this litigation.

33. All documents related to any warnings given by any person or entity related to the dogs which are the subject of this litigation.

34. All documents or records from any animal control department pertaining to the dogs which are the subject of this litigation.

40. All documents or records that refer, mention or pertain to any incident in which the either of the dogs the subject of this litigation allegedly bit, closed its mouth upon, nipped, scratched, or bruised anyone at any time prior to or after the incident alleged in this lawsuit.

42. All documents relating to any training of the dogs the subject of this litigation.

57. All documents relating to any criminal complaint or charge made against you arising from the conduct of any dog you owned or possessed.

Depositions

After the parties exchange written discovery, the next stage of the case is typically taking the depositions of those involved. Depositions are an opportunity to get sworn testimony that is transcribed by a court reporter and is often videotaped.

Deposition questions are much more specific to each case than the more general written discovery, but below is an outline of the broad categories of deposition questions that I asked a dog owner in a terrible case where the dog killed a young child. The requested areas are very broad. The actual deposition in that case lasted several hours.

Deposition - Broad Outline Of Areas Of Inquiry

1. Rules of the deposition
2. Map of the scene of the attack
3. Owner's background (age, driver's license, education background, work background, etc.)
4. Experience with dogs
5. Facts about dog in this case (age, height, weight, breed, ownership history, spayed/neutered)
6. Training for the dog
7. Go through vets, trainers, etc. that the dog has ever seen
8. Owner's experience with the breed
9. Dog's general temperament
10. Prior events relating to the dog's dangerous tendencies or aggressive nature. (Often, we're able to discover evidence relating to prior events, and we'll not only ask the dog owner to provide us information, but we'll go over all the incidents we've found in our investigative efforts.)
11. Information relating to the attack at issue
12. Information whether the dog owner was owning or renting the home where the attack occurred
13. Information about the dog after the attack
14. Questions relating to what the dog owner knows about the victim's injuries from the attack
15. Questions about applicable insurance in the case

Remaining Parts Of A Dog Attack Case

After depositions, the remaining phases of the dog attack trial vary greatly. Some of the important steps that might occur in your dog bite lawsuit are as follows:

1. Expert witnesses. Many dog bites cases will involve one or more expert witnesses. They will have to be identified and then in many cases we will have their depositions before trial. The various types of expert witnesses are your doctors, perhaps a plastic surgeon to give an opinion on any necessary scar revision surgery, and perhaps a behaviorist to talk about how the dog owner raised and handled the dog.
2. Mediation. Almost all lawsuits are required to go through a mediation, which is a settlement conference. A lawyer typically serves as a mediator - a neutral third party who tries to help you get the case resolved.
3. Trial. If we're not able to settle the case amicably, then we have a trial where a jury decides the case. The major steps of the jury trial are:
 - a. Voir dire. This is jury selection. (Or, more accurately, jury deselection.) Each side gets to ask the potential jurors questions. Then each side is given the chance to strike a certain number of jurors. The judge can also strike jurors who have indicated they may not be good jurors for the case. The first six or twelve of the remaining jurors (depending on the court), those who haven't been stricken by either side or the court, then serve as the jury.
 - b. Opening statements. Each party is allowed a certain amount of time to give an opening statement to the jury.
 - c. Evidence. During this part of the trial, the parties present their evidence - testimony, introduction of documents, etc.
 - d. Closing arguments. After both sides have presented all their evidence, the parties are each given the opportunity to present a closing argument to the jury. This usually focuses on the evidence that has been presented and goes over the questions the jury will be asked.
 - e. Reading of the charge. A jury doesn't just decide who wins or loses. Instead, the jury must answer the questions presented to it in the jury charge. The judge then takes the jury's answers from the charge and applies the law to the answers to come up with the verdict. Before the jury starts its deliberations, the judge reads the full charge to the jury.
 - f. Jury deliberations. The jury goes back in the jury room and starts answering the questions presented in the jury charge.

THANK YOU

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